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13 UNITED STATES OF AMERICA  
14  
15 NATIONAL LABOR RELATIONS BOARD  
16  
17 WASHINGTON, DC

18 COMPREHENSIVE CARE OF OAKLAND  
19 LP, BAY AREA HEALTHCARE CENTER,

20 Employer,

21 and

22 CAYETANO SANCHEZ,

23 Petitioner,

24 SEIU, UNITED HEALTHCARE WORKERS-  
25 WEST,

26 Union.

No. 32-RD-134177

**SEIU UNITED HEALTHCARE  
WORKERS-WEST'S REQUEST FOR  
REVIEW OF REGIONAL  
DIRECTOR'S SUPPLEMENTAL  
DECISION ON OBJECTIONS**

Pursuant to the provisions of Sections 102.69(c)(4) and 102.67 of the Board's Rules and Regulations, SEIU-United Healthcare Workers – West ("UHW") hereby respectfully requests that the Board review the Regional Director George Velastegui's Supplemental Decision on Objections dated April 30, 2015 ("Decision") in the above-referenced matter. UHW's request for review is based on the grounds "[t]hat a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent." Thus, UHW requests that the Board grant its request for review and stay the hearing scheduled by the Regional Director on the remaining Objections.

### **I. ISSUE WARRANTING REVIEW**

Whether Regional Director George Velastegui had authority to schedule the election in NLRB case 32-RD-134177 for a date that fell during the Notice posting period in NLRB cases 32-CA-134708 and 32-CA-135626 without obtaining a written waiver from UHW as required by Casehandling Manual section 11734.

### **II. RULE: CASEHANDLING MANUAL SECTION 11734**

#### **11734 Resumption of Processing of Petition Upon Disposition of Charge**

Processing of a petition held in abeyance during the pendency of an unfair labor practice charge may be resumed upon the disposition of the charge. Where the charged party or respondent in the unfair labor practice proceeding has taken all action required by a settlement agreement, administrative law judge's decision, Board Order, or court judgment, except that the full period for posting any required notice has not passed, certain preelection action with respect to the R case may be taken, whether or not the charging party requests that the R case proceed. Thus:

- (a) A hearing may be held
- (b) An election agreement may be approved
- (c) An order dismissing petition or a decision and direction of election may be issued.

1 As noted, these preelection actions may be taken in the absence of  
2 a request to proceed.

3 **ELECTION:** In the event the charging party wishes to proceed to  
4 an election during the posting period, a written waiver must be obtained  
5 from the charging party, stating that the unremedied unfair labor practices  
6 referred to in the posted notice may not constitute grounds on which the  
7 Board may set aside the election.

8 Absent such a waiver, an election should not be held until the  
9 posting period has expired.

### 10 **III. FACTS**

11 The facts here are not in dispute.

12 1. On August 6, 2014, the Petition in case 32-RD-134177 was filed.

13 2. On August 14, 2014, UHW filed the charge in case 32-CA-134708, alleging that  
14 the Employer, and Bay Area Health Care ("BAHC"), maintained unlawful House Rules. UHW  
15 requested that the charge in case 32-CA-134708 block case 32-RD-134177.

16 3. On August 14, 2014, Acting Regional Director Jeffrey L. Henze issued an Order in  
17 case 32-RD-134177 stating that "due to the filing of Unfair Labor Practice charge in Case 32-CA-  
18 134708, the hearing in the above matter set for August 22, 2014, is hereby postponed indefinitely.  
19 (See **Attachment 1**).

20 4. On August 28, 2014, UHW filed the charge in case 32-CA-135626, alleging that  
21 BAHC made unlawful threats. UHW requested that the charge in case 32-CA-134708 also serve  
22 to block case 32-RD-134177.

23 5. On November 19, 2014, Regional Director George Velastegui ("RD Velastegui")  
24 issued an Order in case 32-RD-134177 stating that "[p]ursuant to Representation Case Handling  
25 Manual Section 11731.2, I am hereby resuming the processing of Case 32-RD-134177, and it is  
26 no longer being blocked by pending unfair labor practice charges." A hearing was scheduled for  
27 December 1, 2014. (See **Attachment 2**).  
28

1           6.       On November 28, 2014, RD Velastegui issued a decision in cases 32-CA-134708  
2 and 32-CA-135626 unilaterally approving a Settlement Agreement of those Unfair Labor Practice  
3 charges. (See **Attachment 3**).

4           7.       On December 29, 2014, Compliance Officer Hokulani Valencia issued a letter to  
5 BAHC enclosing a conformed copy of the Settlement Agreement that was approved by RD  
6 Velastegui in cases 32-CA-134708 and 32-CA-135626. The December 29, 2014 letter also  
7 enclosed copies of the Notice to Employees in English and Spanish with instructions that they be  
8 “posted in all locations where notices to employees are customarily posted for 60 consecutive  
9 days at the Employer’s place of business in Oakland, California. (See **Attachment 4**). The  
10 Notice contains language addressing the violations alleged in both cases 32-CA-134708 and 32-  
11 CA-135626.

12           8.       On January 20, 2015, RD Velastegui issued a Decision and Direction of Election  
13 in case 32-RD-134177. (See **Attachment 5**).

14           9.       On January 28, 2015, RD Velastegui issued a letter scheduling the election for  
15 February 18, 2014. (See **Attachment 6**).

16           10.      RD Velastegui neither sought nor obtained a written waiver from UHW before  
17 proceeding to schedule the election in 32-RD-134177 during the Notice posting period in cases  
18 32-CA-134708 and 32-CA-135626.

19           11.      The election in case 32-RD-134177 was conducted on February 18, 2014.

20           12.      On February 25, 2015, UHW filed objections, which UHW served on counsel for  
21 BAHC. (See **Attachment 7**). Objection No. 39 states in relevant part: “The laboratory  
22 conditions for a fair election were destroyed and the outcome of the election was affected because  
23 the Region proceeded with an election although a Notice period to remedy the Employer’s unfair  
24 labor practices had not concluded.” (*Ibid.* at p. 6).

25           13.      On March 3, 2015, UHW submitted its offer of proof in support of its Objections.

26           14.      On March 23, 2015, Compliance Officer Hokulani Valencia issued a letter  
27 informing UHW’s counsel that BACH “complied with the terms of the Settlement Agreement” in  
28 cases 32-CA-134708 and 32-CA-135626. (See **Attachment 8**).

15. On March 27, 2015, UHW's counsel sent a letter to RD Velastegui regarding the Regional Director's failure to follow the procedure set forth in Casehandling Manual Section 11734. (See **Attachment 9**).

#### IV. REQUEST FOR REVIEW

Board Rule 102.67(c) states that a Request for Review may be granted if “a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent.”

As the undisputed facts here show, on January 28, 2015, Regional Director George Velastegui proceeded to schedule the election in case 32-RD134177 for a date that fell during the Notice posting period in cases 32-CA-134708 and 32-CA-135626. The Regional Director did not obtain a written waiver from UHW before proceeding to schedule the election for February 18, despite the clear language in Casehandling Manual Section 11734 that “[a]bsent such a waiver, an election should not be held until the posting period has expired.”

The Board procedure and policy is clearly stated in the Casehandling Manual. The Regional Director can process the petition, but he had no authority to schedule the election during the Notice posting period absent a waiver from UHW. In his Decision, the Regional Director does not explain why he failed to obtain, let alone ask for, a waiver from UHW before scheduling the election during the Notice posting period. The Decision does not cite any Board precedent giving the Regional Director the power to dispense his own rule for scheduling elections that is contrary to the Board procedure that is explained clearly to unions, employers, and employees in the Casehandling Manual.

Instead, rather than acknowledge his mistake of departing from the firmly established procedure set forth in the Casehandling Manual, the Regional Director brushes the Objection aside with a *post hoc* explanation that there was no foul because *prior* to the commencement of the Notice posting period the Employer rescinded the unlawful House rules that were at issue in case 32-CA- 134708. But the Casehandling Manual does not contain an exception for the requirements of a waiver when the unlawful conduct is rescinded prior to the Notice posting period. The Casehandling Manual is clear that the Notice posting period must have ended before

1 the election is scheduled, absent a written waiver from the Charging Party. As noted above, the  
2 Regional Director did not even try to obtain a waiver from UHW before proceeding to schedule  
3 the election, and certainly, the Regional Director did not inform UHW that it was proceeding to  
4 schedule the election prior to the expiration of the posting period because the unlawful rules had  
5 been rescinded.<sup>1</sup>

6 But even if “rescission” of the unlawful rules were, as the Regional Director suggests in  
7 his Decision, an exception that allows the Regional Director to disregard the Board policy of a  
8 60-day Notice posting period to remedy a violation, the Regional Director fails to explain why a  
9 Notice posting period was not necessary to remedy the unlawful threats that were at issue in case  
10 32-CA-135626. Clearly, in approving the Notice, the Regional Director believed that the  
11 unlawful threats by the Employer were something that the eligible voters needed to be notified  
12 was unlawful conduct and for which a Notice posting was required as a remedy. (See  
13 **Attachment 4**).

14 The Regional Director’s decision to dispense his own rule that is in direct conflict with the  
15 procedure set forth in the Casehandling manual, as well as his post hoc reasoning that there was  
16 no foul because the unlawful rules were “rescinded” prior to the commencement of the Notice  
17 posting period, cannot be an acceptable position of the Board, and for that reason, the Board  
18 should grant this request for review.

## 19 **V. CONCLUSION**

20 The Regional Director’s Decision leads to a result which is manifestly unfair as it departs  
21 from the procedure and policy that is set forth clearly in Section 11734 of the Casehandling  
22 Manual. The Regional Director was wrong to dispense his own rule and ignore the requirements  
23 set forth in the Casehandling Manual for all parties to understand and know what to expect during  
24 the Board process.

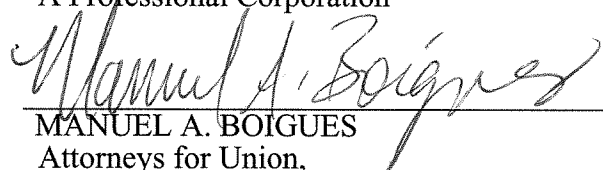
25 <sup>1</sup> Under RD Velategui’s logic, if the Unfair Labor Practice charges at issue had alleged that the  
26 Employer terminated Union Stewards on account of their Union activities, the Region would have  
27 been allowed to schedule the election during the Notice posting period if the Employer had  
28 reinstated the Stewards to work prior to the commencement of the Notice posting period. Surely,  
that is not the policy of the Board, which relies heavily not only on rescission of unlawful conduct  
but also a Notice posting to cure violations of the Act.

1           There is no exception in the Casehandling Manual giving the Regional Director the  
2 authority to schedule an election during a Notice posting period without a written waiver simply  
3 because the unlawful conduct is “rescinded” prior to the commencement of the Notice posting  
4 period. The Board should grant this request for review and make this clear. Otherwise, a  
5 Charging Party’s right to decide whether or not to grant such a written waiver can be trampled by  
6 a Regional Director on a whim, without notice or due process, a result which – plainly spoken –  
7 makes no sense and undermines the trust that parties appearing before the Board should have  
8 about Board process and procedures set forth in the Board’s own documents.

9           For all of the above reasons, UHW respectfully requests that the Board accept this  
10 Request for Review, stay the hearing on the remaining objections, and order a new election.

11 Dated: May 14, 2015

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